

The 2024 Florida Statutes

[Title XLIV](#)
CIVIL RIGHTS

[Chapter 765](#)
HEALTH CARE ADVANCE DIRECTIVES

[View Entire Chapter](#)

CHAPTER 765
HEALTH CARE ADVANCE DIRECTIVES

PART I
GENERAL PROVISIONS
(ss. 765.101-765.113)

PART II
HEALTH CARE SURROGATE
(ss. 765.201-765.205)

PART III
LIFE-PROLONGING PROCEDURES
(ss. 765.301-765.309)

PART IV
ABSENCE OF ADVANCE DIRECTIVE
(ss. 765.401, 765.404)

PART V
ANATOMICAL GIFTS
(ss. 765.510-765.547)

PART I
GENERAL PROVISIONS

- 765.101 Definitions.
- 765.102 Legislative findings and intent.
- 765.103 Existing advance directives.
- 765.104 Amendment or revocation.
- 765.105 Review of surrogate or proxy’s decision.
- 765.106 Preservation of existing rights.
- 765.107 Construction.
- 765.108 Effect with respect to insurance.
- 765.109 Immunity from liability; weight of proof; presumption.
- 765.110 Health care facilities and providers; discipline.
- 765.1103 Pain management and palliative care.
- 765.1105 Transfer of a patient.
- 765.1115 Falsification, forgery, or willful concealment, cancellation, or destruction of directive or revocation or amendment; penalties.

765.112 Recognition of advance directive executed in another state.

765.113 Restrictions on providing consent.

765.101 Definitions.—As used in this chapter:

(1) “Advance directive” means a witnessed written document or oral statement in which instructions are given by a principal or in which the principal’s desires are expressed concerning any aspect of the principal’s health care or health information, and includes, but is not limited to, the designation of a health care surrogate, a living will, or an anatomical gift made pursuant to part V of this chapter.

(2) “Attending physician” means the physician who has primary responsibility for the treatment and care of the patient while the patient receives such treatment or care in a hospital as defined in s. 395.002(12).

(3) “Close personal friend” means any person 18 years of age or older who has exhibited special care and concern for the patient, and who presents an affidavit to the health care facility or to the primary physician stating that he or she is a friend of the patient; is willing and able to become involved in the patient’s health care; and has maintained such regular contact with the patient so as to be familiar with the patient’s activities, health, and religious or moral beliefs.

(4) “End-stage condition” means an irreversible condition that is caused by injury, disease, or illness which has resulted in progressively severe and permanent deterioration, and which, to a reasonable degree of medical probability, treatment of the condition would be ineffective.

(5) “Health care” means care, services, or supplies related to the health of an individual and includes, but is not limited to, preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the individual’s physical or mental condition or functional status or that affect the structure or function of the individual’s body.

(6) “Health care decision” means:

(a) Informed consent, refusal of consent, or withdrawal of consent to any and all health care, including life-prolonging procedures and mental health treatment, unless otherwise stated in the advance directives.

(b) The decision to apply for private, public, government, or veterans’ benefits to defray the cost of health care.

(c) The right of access to health information of the principal reasonably necessary for a health care surrogate or proxy to make decisions involving health care and to apply for benefits.

(d) The decision to make an anatomical gift pursuant to part V of this chapter.

(7) “Health care facility” means a hospital, nursing home, hospice, home health agency, or health maintenance organization licensed in this state, or any facility subject to part I of chapter 394.

(8) “Health care provider” or “provider” means any person licensed, certified, or otherwise authorized by law to administer health care in the ordinary course of business or practice of a profession.

(9) “Health information” means any information, whether oral or recorded in any form or medium, as defined in 45 C.F.R. s. 160.103 and the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. s. 1320d, as amended, that:

(a) Is created or received by a health care provider, health care facility, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(b) Relates to the past, present, or future physical or mental health or condition of the principal; the provision of health care to the principal; or the past, present, or future payment for the provision of health care to the principal.

(10) “Incapacity” or “incompetent” means the patient is physically or mentally unable to communicate a willful and knowing health care decision. For the purposes of making an anatomical gift, the term also includes a patient who is deceased.

(11) “Informed consent” means consent voluntarily given by a person after a sufficient explanation and disclosure of the subject matter involved to enable that person to have a general understanding of the treatment or procedure and the medically acceptable alternatives, including the substantial risks and hazards inherent in the

proposed treatment or procedures, and to make a knowing health care decision without coercion or undue influence.

(12) “Life-prolonging procedure” means any medical procedure, treatment, or intervention, including artificially provided sustenance and hydration, which sustains, restores, or supplants a spontaneous vital function. The term does not include the administration of medication or performance of medical procedure, when such medication or procedure is deemed necessary to provide comfort care or to alleviate pain.

(13) “Living will” or “declaration” means:

(a) A witnessed document in writing, voluntarily executed by the principal in accordance with s. 765.302; or

(b) A witnessed oral statement made by the principal expressing the principal’s instructions concerning life-prolonging procedures.

(14) “Minor’s principal” means a principal who is a natural guardian as defined in s. 744.301(1); legal custodian; or, subject to chapter 744, legal guardian of the person of a minor.

(15) “Persistent vegetative state” means a permanent and irreversible condition of unconsciousness in which there is:

(a) The absence of voluntary action or cognitive behavior of any kind.

(b) An inability to communicate or interact purposefully with the environment.

(16) “Physician” means a person licensed pursuant to chapter 458 or chapter 459.

(17) “Primary physician” means a physician designated by an individual or the individual’s surrogate, proxy, or agent under a durable power of attorney as provided in chapter 709, to have primary responsibility for the individual’s health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

(18) “Principal” means a competent adult executing an advance directive and on whose behalf health care decisions are to be made or health care information is to be received, or both.

(19) “Proxy” means a competent adult who has not been expressly designated to make health care decisions for a particular incapacitated individual, but who, nevertheless, is authorized pursuant to s. 765.401 to make health care decisions for such individual.

(20) “Reasonably available” means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient’s health care needs.

(21) “Surrogate” means any competent adult expressly designated by a principal to make health care decisions and to receive health information. The principal may stipulate whether the authority of the surrogate to make health care decisions or to receive health information is exercisable immediately without the necessity for a determination of incapacity or only upon the principal’s incapacity as provided in s. 765.204.

(22) “Terminal condition” means a condition caused by injury, disease, or illness from which there is no reasonable medical probability of recovery and which, without treatment, can be expected to cause death.

History.—s. 2, ch. 92-199; s. 3, ch. 94-183; s. 46, ch. 96-169; s. 16, ch. 99-331; s. 3, ch. 2001-250; s. 131, ch. 2001-277; s. 104, ch. 2006-1; s. 28, ch. 2006-178; s. 2, ch. 2015-153; s. 14, ch. 2021-112; s. 60, ch. 2022-4.

765.102 Legislative findings and intent.—

(1) The Legislature finds that every competent adult has the fundamental right of self-determination regarding decisions pertaining to his or her own health, including the right to choose or refuse medical treatment. This right is subject to certain interests of society, such as the protection of human life and the preservation of ethical standards in the medical profession.

(2) To ensure that such right is not lost or diminished by virtue of later physical or mental incapacity, the Legislature intends that a procedure be established to allow a person to plan for incapacity by executing a document or orally designating another person to direct the course of his or her health care or receive his or her health information, or both, upon his or her incapacity. Such procedure should be less expensive and less restrictive than guardianship and permit a previously incapacitated person to exercise his or her full right to make health care decisions as soon as the capacity to make such decisions has been regained.

(3) The Legislature also recognizes that some competent adults may want to receive immediate assistance in making health care decisions or accessing health information, or both, without a determination of incapacity. The Legislature intends that a procedure be established to allow a person to designate a surrogate to make health care decisions or receive health information, or both, without the necessity for a determination of incapacity under this chapter.

(4) The Legislature recognizes that for some the administration of life-prolonging medical procedures may result in only a precarious and burdensome existence. In order to ensure that the rights and intentions of a person may be respected even after he or she is no longer able to participate actively in decisions concerning himself or herself, and to encourage communication among such patient, his or her family, and his or her physician, the Legislature declares that the laws of this state recognize the right of a competent adult to make an advance directive instructing his or her physician to provide, withhold, or withdraw life-prolonging procedures or to designate another to make the health care decision for him or her in the event that such person should become incapacitated and unable to personally direct his or her health care.

(5) The Legislature recognizes the need for all health care professionals to rapidly increase their understanding of end-of-life and palliative care. Therefore, the Legislature encourages the professional regulatory boards to adopt appropriate standards and guidelines regarding end-of-life care and pain management and encourages educational institutions established to train health care professionals and allied health professionals to implement curricula to train such professionals to provide end-of-life care, including pain management and palliative care.

(6) For purposes of this chapter:

(a) Palliative care is the comprehensive management of the physical, psychological, social, spiritual, and existential needs of patients. Palliative care is especially suited to the care of persons who have incurable, progressive illnesses.

(b) Palliative care must include:

1. An opportunity to discuss and plan for end-of-life care.
2. Assurance that physical and mental suffering will be carefully attended to.
3. Assurance that preferences for withholding and withdrawing life-sustaining interventions will be honored.
4. Assurance that the personal goals of the dying person will be addressed.
5. Assurance that the dignity of the dying person will be a priority.
6. Assurance that health care providers will not abandon the dying person.
7. Assurance that the burden to family and others will be addressed.
8. Assurance that advance directives for care will be respected regardless of the location of care.
9. Assurance that organizational mechanisms are in place to evaluate the availability and quality of end-of-life, palliative, and hospice care services, including the evaluation of administrative and regulatory barriers.
10. Assurance that necessary health care services will be provided and that relevant reimbursement policies are available.
11. Assurance that the goals expressed in subparagraphs 1.-10. will be accomplished in a culturally appropriate manner.

(7) The Department of Elderly Affairs, the Agency for Health Care Administration, and the Department of Health shall jointly create a campaign on end-of-life care for purposes of educating the public. This campaign should include culturally sensitive programs to improve understanding of end-of-life care issues in minority communities.

History.—s. 2, ch. 92-199; s. 1144, ch. 97-102; s. 17, ch. 99-331; s. 7, ch. 2000-295; s. 4, ch. 2001-250; ss. 132, 133, ch. 2001-277; s. 3, ch. 2015-153.

765.103 Existing advance directives.—Any advance directive made prior to October 1, 1999, shall be given effect as executed, provided such directive was legally effective when written.

History.—s. 2, ch. 92-199; s. 18, ch. 99-331.

765.104 Amendment or revocation.—

(1) An advance directive may be amended or revoked at any time by a competent principal:

- (a) By means of a signed, dated writing;
- (b) By means of the physical cancellation or destruction of the advance directive by the principal or by another in the principal's presence and at the principal's direction;
- (c) By means of an oral expression of intent to amend or revoke; or
- (d) By means of a subsequently executed advance directive that is materially different from a previously executed advance directive.

(2) Unless otherwise provided in the advance directive or in an order of dissolution or annulment of marriage, the dissolution or annulment of marriage of the principal revokes the designation of the principal's former spouse as a surrogate.

(3) Any such amendment or revocation will be effective when it is communicated to the surrogate, health care provider, or health care facility. No civil or criminal liability shall be imposed upon any person for a failure to act upon an amendment or revocation unless that person has actual knowledge of such amendment or revocation.

(4) Any patient for whom a medical proxy has been recognized under s. 765.401 and for whom any previous legal disability that precluded the patient's ability to consent is removed may amend or revoke the recognition of the medical proxy and any uncompleted decision made by that proxy. The amendment or revocation takes effect when it is communicated to the proxy, the health care provider, or the health care facility in writing or, if communicated orally, in the presence of a third person.

History.—s. 2, ch. 92-199; s. 47, ch. 96-169; s. 19, ch. 99-331; s. 12, ch. 2002-195; s. 4, ch. 2015-153.

765.105 Review of surrogate or proxy's decision.—

(1) The patient's family, the health care facility, or the primary physician, or any other interested person who may reasonably be expected to be directly affected by the surrogate or proxy's decision concerning any health care decision may seek expedited judicial intervention pursuant to rule 5.900 of the Florida Probate Rules, if that person believes:

- (a) The surrogate or proxy's decision is not in accord with the patient's known desires or this chapter;
- (b) The advance directive is ambiguous, or the patient has changed his or her mind after execution of the advance directive;
- (c) The surrogate or proxy was improperly designated or appointed, or the designation of the surrogate is no longer effective or has been revoked;
- (d) The surrogate or proxy has failed to discharge duties, or incapacity or illness renders the surrogate or proxy incapable of discharging duties;
- (e) The surrogate or proxy has abused his or her powers; or
- (f) The patient has sufficient capacity to make his or her own health care decisions.

(2) This section does not apply to a patient who is not incapacitated and who has designated a surrogate who has immediate authority to make health care decisions or receive health information, or both, on behalf of the patient.

History.—s. 2, ch. 92-199; s. 4, ch. 94-183; s. 5, ch. 2015-153; s. 85, ch. 2016-10.

765.106 Preservation of existing rights.—The provisions of this chapter are cumulative to the existing law regarding an individual's right to consent, or refuse to consent, to medical treatment and do not impair any existing rights or responsibilities which a health care provider, a patient, including a minor, competent or incompetent person, or a patient's family may have under the common law, Federal Constitution, State Constitution, or statutes of this state.

History.—s. 2, ch. 92-199; s. 5, ch. 94-183.

765.107 Construction.—

(1) This chapter shall not be construed to repeal by implication any provision of s. 766.103, the Florida Medical Consent Law. For all purposes, the Florida Medical Consent Law shall be considered an alternative to provisions of this section.

(2) Procedures provided in this chapter permitting the withholding or withdrawal of life-prolonging procedures do not apply to a person who never had capacity to designate a health care surrogate or execute a living will.

History.—s. 2, ch. 92-199; s. 20, ch. 99-331.

765.108 Effect with respect to insurance.—The making of an advance directive pursuant to the provisions of this chapter shall not affect the sale, procurement, or issuance of any policy of life insurance, nor shall such making of an advance directive be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance will be legally impaired or invalidated by the withholding or withdrawal of life-prolonging procedures from an insured patient in accordance with the provisions of this chapter, nor by any other treatment decision made according to this chapter, notwithstanding any term of the policy to the contrary. A person shall not be required to make an advance directive as a condition for being insured for, or receiving, health care services.

History.—s. 2, ch. 92-199.

765.109 Immunity from liability; weight of proof; presumption.—

(1) A health care facility, provider, or other person who acts under the direction of a health care facility or provider is not subject to criminal prosecution or civil liability, and will not be deemed to have engaged in unprofessional conduct, as a result of carrying out a health care decision made in accordance with the provisions of this chapter. The surrogate or proxy who makes a health care decision on a patient's behalf, pursuant to this chapter, is not subject to criminal prosecution or civil liability for such action.

(2) The provisions of this section shall apply unless it is shown by a preponderance of the evidence that the person authorizing or effectuating a health care decision did not, in good faith, comply with the provisions of this chapter.

History.—s. 2, ch. 92-199.

765.110 Health care facilities and providers; discipline.—

(1) A health care facility, pursuant to Pub. L. No. 101-508, ss. 4206 and 4751, shall provide to each patient written information concerning the individual's rights concerning advance directives and the health care facility's policies respecting the implementation of such rights, and shall document in the patient's medical records whether or not the individual has executed an advance directive.

(2) A health care provider or health care facility may not require a patient to execute an advance directive or to execute a new advance directive using the facility's or provider's forms. The patient's advance directives shall travel with the patient as part of the patient's medical record.

(3) A health care provider or health care facility shall be subject to professional discipline and revocation of license or certification, and a fine of not more than \$1,000 per incident, or both, if the health care provider or health care facility, as a condition of treatment or admission, requires an individual to execute or waive an advance directive.

(4) The Department of Health, in consultation with the Department of Elderly Affairs, for health care providers; the Agency for Health Care Administration for hospitals, hospices, nursing homes, home health agencies, and health maintenance organizations; and the Department of Children and Families for facilities subject to part I of chapter 394 shall adopt rules to implement this section.

History.—s. 2, ch. 92-199; s. 6, ch. 94-183; s. 243, ch. 94-218; s. 48, ch. 96-169; s. 284, ch. 99-8; s. 21, ch. 99-331; s. 293, ch. 2014-19; s. 29, ch. 2019-11.

765.1103 Pain management and palliative care.—

(1) A patient shall be given information concerning pain management and palliative care when he or she discusses with the primary physician, or such physician's designee, the diagnosis, planned course of treatment, alternatives, risks, or prognosis for his or her illness. If the patient is incapacitated, the information shall be given to the patient's health care surrogate or proxy, court-appointed guardian as provided in chapter 744, or attorney in fact under a durable power of attorney as provided in chapter 709. The court-appointed guardian or attorney in fact must have been delegated authority to make health care decisions on behalf of the patient.

(2) Health care providers and practitioners regulated under chapter 458, chapter 459, or chapter 464 must, as appropriate, comply with a request for pain management or palliative care from a patient under their care or, for an incapacitated patient under their care, from a surrogate, proxy, guardian, or other representative permitted to make health care decisions for the incapacitated patient. Facilities regulated under chapter 395, chapter 400, or chapter 429 must comply with the pain management or palliative care measures ordered by the patient's physician.

History.—s. 8, ch. 2000-295; s. 5, ch. 2001-250; s. 134, ch. 2001-277; s. 105, ch. 2006-197; s. 6, ch. 2015-153.

765.1105 Transfer of a patient.—

(1) A health care provider or facility that refuses to comply with a patient's advance directive, or the treatment decision of his or her surrogate or proxy, shall make reasonable efforts to transfer the patient to another health care provider or facility that will comply with the directive or treatment decision. This chapter does not require a health care provider or facility to commit any act which is contrary to the provider's or facility's moral or ethical beliefs, if the patient:

(a) Is not in an emergency condition; and

(b) Has received written information upon admission informing the patient of the policies of the health care provider or facility regarding such moral or ethical beliefs.

(2) A health care provider or facility that is unwilling to carry out the wishes of the patient or the treatment decision of his or her surrogate or proxy because of moral or ethical beliefs must within 7 days either:

(a) Transfer the patient to another health care provider or facility. The health care provider or facility shall pay the costs for transporting the patient to another health care provider or facility; or

(b) If the patient has not been transferred, carry out the wishes of the patient or the patient's surrogate or proxy, unless s. 765.105 applies.

History.—s. 4, ch. 92-199; s. 11, ch. 94-183; s. 1148, ch. 97-102; s. 30, ch. 99-331; s. 7, ch. 2015-153.

Note.—Former s. 765.308.

765.1115 Falsification, forgery, or willful concealment, cancellation, or destruction of directive or revocation or amendment; penalties.—

(1) Any person who willfully conceals, cancels, defaces, obliterates, or damages an advance directive without the principal's consent or who falsifies or forges the revocation or amendment of an advance directive of another, and who thereby causes life-prolonging procedures to be utilized in contravention of the previously expressed intent of the principal, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who falsifies or forges the advance directive of another or who willfully conceals or withholds personal knowledge of the revocation of an advance directive, with the intent to cause a withholding or withdrawal of life-prolonging procedures contrary to the wishes of the principal, and who thereby because of such act directly causes life-prolonging procedures to be withheld or withdrawn and death to be hastened, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 4, ch. 92-199; s. 31, ch. 99-331.

Note.—Former s. 765.310.

765.112 Recognition of advance directive executed in another state.—An advance directive executed in another state in compliance with the law of that state or of this state is validly executed for the purposes of this chapter.

History.—s. 2, ch. 92-199.

765.113 Restrictions on providing consent.—Unless the principal expressly delegates such authority to the surrogate in writing, or a surrogate or proxy has sought and received court approval pursuant to rule 5.900 of the Florida Probate Rules, a surrogate or proxy may not provide consent for:

(1) Abortion, sterilization, electroshock therapy, psychosurgery, experimental treatments that have not been approved by a federally approved institutional review board in accordance with 45 C.F.R. part 46 or 21 C.F.R. part

56, or voluntary admission to a mental health facility.

(2) Withholding or withdrawing life-prolonging procedures from a pregnant patient prior to viability as defined in s. 390.0111(4).

History.—s. 2, ch. 92-199; s. 7, ch. 94-183; s. 87, ch. 99-3.

PART II HEALTH CARE SURROGATE

765.201 Short title.

765.202 Designation of a health care surrogate.

765.203 Suggested form of designation.

765.2035 Designation of a health care surrogate for a minor.

765.2038 Designation of health care surrogate for a minor; suggested form.

765.204 Capacity of principal; procedure.

765.205 Responsibility of the surrogate.

765.201 Short title.—Sections 765.202-765.205 may be cited as the “Florida Health Care Surrogate Act.”

History.—s. 3, ch. 92-199.

765.202 Designation of a health care surrogate.—

(1) A written document designating a surrogate to make health care decisions for a principal or receive health information on behalf of a principal, or both, shall be signed by the principal in the presence of two subscribing adult witnesses. A principal unable to sign the instrument may, in the presence of witnesses, direct that another person sign the principal’s name as required herein. An exact copy of the instrument shall be provided to the surrogate.

(2) The person designated as surrogate shall not act as witness to the execution of the document designating the health care surrogate. At least one person who acts as a witness shall be neither the principal’s spouse nor blood relative.

(3) A document designating a health care surrogate may also designate an alternate surrogate provided the designation is explicit. The alternate surrogate may assume his or her duties as surrogate for the principal if the original surrogate is not willing, able, or reasonably available to perform his or her duties. The principal’s failure to designate an alternate surrogate shall not invalidate the designation of a surrogate.

(4) If neither the designated surrogate nor the designated alternate surrogate is willing, able, or reasonably available to make health care decisions on behalf of the principal and in accordance with the principal’s instructions, the health care facility may seek the appointment of a proxy pursuant to part IV.

(5) A principal may designate a separate surrogate to consent to mental health treatment in the event that the principal is determined by a court to be incompetent to consent to mental health treatment and a guardian advocate is appointed as provided under s. 394.4598. However, unless the document designating the health care surrogate expressly states otherwise, the court shall assume that the health care surrogate authorized to make health care decisions under this chapter is also the principal’s choice to make decisions regarding mental health treatment.

(6) A principal may stipulate in the document that the authority of the surrogate to receive health information or make health care decisions, or both, is exercisable immediately without the necessity for a determination of incapacity as provided in s. 765.204.

(7) Unless the document states a time of termination, the designation shall remain in effect until revoked by the principal.

(8) A written designation of a health care surrogate executed pursuant to this section establishes a rebuttable presumption of clear and convincing evidence of the principal’s designation of the surrogate.

History.—s. 3, ch. 92-199; s. 8, ch. 94-183; s. 49, ch. 96-169; s. 1797, ch. 97-102; s. 8, ch. 2015-153.

765.203 Suggested form of designation.—A written designation of a health care surrogate executed pursuant to this chapter may, but need not be, in the following form:

DESIGNATION OF HEALTH CARE SURROGATE

I, _(name)_, designate as my health care surrogate under s. 765.202, Florida Statutes:

Name: _(name of health care surrogate)_

Address: _(address)_

Phone: _(telephone)_

If my health care surrogate is not willing, able, or reasonably available to perform his or her duties, I designate as my alternate health care surrogate:

Name: _(name of alternate health care surrogate)_

Address: _(address)_

Phone: _(telephone)_

INSTRUCTIONS FOR HEALTH CARE

I authorize my health care surrogate to:

(Initial here) Receive any of my health information, whether oral or recorded in any form or medium, that:

1. Is created or received by a health care provider, health care facility, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
2. Relates to my past, present, or future physical or mental health or condition; the provision of health care to me; or the past, present, or future payment for the provision of health care to me.

I further authorize my health care surrogate to:

(Initial here) Make all health care decisions for me, which means he or she has the authority to:

1. Provide informed consent, refusal of consent, or withdrawal of consent to any and all of my health care, including life-prolonging procedures.
2. Apply on my behalf for private, public, government, or veterans' benefits to defray the cost of health care.
3. Access my health information reasonably necessary for the health care surrogate to make decisions involving my health care and to apply for benefits for me.
4. Decide to make an anatomical gift pursuant to part V of chapter 765, Florida Statutes.

(Initial here) Specific instructions and restrictions:

While I have decisionmaking capacity, my wishes are controlling and my physicians and health care providers must clearly communicate to me the treatment plan or any change to the treatment plan prior to its implementation.

To the extent I am capable of understanding, my health care surrogate shall keep me reasonably informed of all decisions that he or she has made on my behalf and matters concerning me.

THIS HEALTH CARE SURROGATE DESIGNATION IS NOT AFFECTED BY MY SUBSEQUENT INCAPACITY EXCEPT AS PROVIDED IN CHAPTER 765, FLORIDA STATUTES.

PURSUANT TO SECTION 765.104, FLORIDA STATUTES, I UNDERSTAND THAT I MAY, AT ANY TIME WHILE I RETAIN MY CAPACITY, REVOKE OR AMEND THIS DESIGNATION BY:

(1) SIGNING A WRITTEN AND DATED INSTRUMENT WHICH EXPRESSES MY INTENT TO AMEND OR REVOKE THIS DESIGNATION;

- (2) PHYSICALLY DESTROYING THIS DESIGNATION THROUGH MY OWN ACTION OR BY THAT OF ANOTHER PERSON IN MY PRESENCE AND UNDER MY DIRECTION;
- (3) VERBALLY EXPRESSING MY INTENTION TO AMEND OR REVOKE THIS DESIGNATION; OR
- (4) SIGNING A NEW DESIGNATION THAT IS MATERIALLY DIFFERENT FROM THIS DESIGNATION.

MY HEALTH CARE SURROGATE’S AUTHORITY BECOMES EFFECTIVE WHEN MY PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE FOLLOWING BOXES:

IF I INITIAL THIS BOX [], MY HEALTH CARE SURROGATE’S AUTHORITY TO RECEIVE MY HEALTH INFORMATION TAKES EFFECT IMMEDIATELY.

IF I INITIAL THIS BOX [], MY HEALTH CARE SURROGATE’S AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT IMMEDIATELY. PURSUANT TO SECTION 765.204(3), FLORIDA STATUTES, ANY INSTRUCTIONS OR HEALTH CARE DECISIONS I MAKE, EITHER VERBALLY OR IN WRITING, WHILE I POSSESS CAPACITY SHALL SUPERSEDE ANY INSTRUCTIONS OR HEALTH CARE DECISIONS MADE BY MY SURROGATE THAT ARE IN MATERIAL CONFLICT WITH THOSE MADE BY ME.

SIGNATURES: Sign and date the form here:

_____(date)_____ _____(sign your name)_____
_____(address)_____ _____(print your name)_____
_____(city)_____ _____(state)_____

SIGNATURES OF WITNESSES:

First witness

Second witness

_____(print name)_____ _____(print name)_____
_____(address)_____ _____(address)_____
_____(city)_____ _____(state)_____ _____(city)_____ _____(state)_____
_____(signature of witness)_____ _____(signature of witness)_____
_____(date)_____ _____(date)_____

History.—s. 3, ch. 92-199; s. 1145, ch. 97-102; s. 9, ch. 2000-295; s. 1, ch. 2008-223; s. 9, ch. 2015-153.

765.2035 Designation of a health care surrogate for a minor.—

(1) A natural guardian as defined in s. 744.301(1), legal custodian, or legal guardian of the person of a minor may designate a competent adult to serve as a surrogate to make health care decisions for the minor. Such designation shall be made by a written document signed by the minor’s principal in the presence of two subscribing adult witnesses. If a minor’s principal is unable to sign the instrument, the principal may, in the presence of witnesses, direct that another person sign the minor’s principal’s name as required by this subsection. An exact copy of the instrument shall be provided to the surrogate.

(2) The person designated as surrogate may not act as witness to the execution of the document designating the health care surrogate.

(3) A document designating a health care surrogate may also designate an alternate surrogate; however, such designation must be explicit. The alternate surrogate may assume his or her duties as surrogate if the original surrogate is not willing, able, or reasonably available to perform his or her duties. The minor’s principal’s failure to designate an alternate surrogate does not invalidate the designation.

(4) If neither the designated surrogate or the designated alternate surrogate is willing, able, or reasonably available to make health care decisions for the minor on behalf of the minor’s principal and in accordance with the minor’s principal’s instructions, s. 743.0645(2) shall apply as if no surrogate had been designated.

(5) A natural guardian as defined in s. 744.301(1), legal custodian, or legal guardian of the person of a minor may designate a separate surrogate to consent to mental health treatment for the minor. However, unless the document designating the health care surrogate expressly states otherwise, the court shall assume that the health care

surrogate authorized to make health care decisions for a minor under this chapter is also the minor's principal's choice to make decisions regarding mental health treatment for the minor.

(6) Unless the document states a time of termination, the designation shall remain in effect until revoked by the minor's principal. An otherwise valid designation of a surrogate for a minor shall not be invalid solely because it was made before the birth of the minor.

(7) A written designation of a health care surrogate executed pursuant to this section establishes a rebuttable presumption of clear and convincing evidence of the minor's principal's designation of the surrogate and becomes effective pursuant to s. 743.0645(2)(a).

History.—s. 10, ch. 2015-153.

765.2038 Designation of health care surrogate for a minor; suggested form.—A written designation of a health care surrogate for a minor executed pursuant to this chapter may, but need not, be in the following form:

DESIGNATION OF HEALTH CARE SURROGATE
FOR MINOR

I/We, _(name/names)_, the ☐ natural guardian(s) as defined in s. 744.301(1), Florida Statutes; ☐ legal custodian(s); ☐ legal guardian(s) ☐ [check one] of the following minor(s):

;
;
,

pursuant to s. 765.2035, Florida Statutes, designate the following person to act as my/our surrogate for health care decisions for such minor(s) in the event that I/we am/are not able or reasonably available to provide consent for medical treatment and surgical and diagnostic procedures:

Name: _(name)_

Address: _(address)_

Zip Code: _(zip code)_

Phone: _(telephone)_

If my/our designated health care surrogate for a minor is not willing, able, or reasonably available to perform his or her duties, I/we designate the following person as my/our alternate health care surrogate for a minor:

Name: _(name)_

Address: _(address)_

Zip Code: _(zip code)_

Phone: _(telephone)_

I/We authorize and request all physicians, hospitals, or other providers of medical services to follow the instructions of my/our surrogate or alternate surrogate, as the case may be, at any time and under any circumstances whatsoever, with regard to medical treatment and surgical and diagnostic procedures for a minor, provided the medical care and treatment of any minor is on the advice of a licensed physician.

I/We fully understand that this designation will permit my/our designee to make health care decisions for a minor and to provide, withhold, or withdraw consent on my/our behalf, to apply for public benefits to defray the cost of health care, and to authorize the admission or transfer of a minor to or from a health care facility.

I/We will notify and send a copy of this document to the following person(s) other than my/our surrogate, so that they may know the identity of my/our surrogate:

Name: _(name)_

Name: _(name)_

Signed: _(signature)_

Date: _(date)_

WITNESSES:

1. _(witness)_

2. _(witness)_

History.—s. 11, ch. 2015-153; s. 86, ch. 2016-10.

765.204 Capacity of principal; procedure.—

(1) A principal is presumed to be capable of making health care decisions for herself or himself unless she or he is determined to be incapacitated. While a principal has decisionmaking capacity, the principal's wishes are controlling. Each physician or health care provider must clearly communicate to a principal with decisionmaking capacity the treatment plan and any change to the treatment plan prior to implementation of the plan or the change to the plan. Incapacity may not be inferred from the person's voluntary or involuntary hospitalization for mental illness or from her or his intellectual disability.

(2) If a principal's capacity to make health care decisions for herself or himself or provide informed consent is in question, the primary or attending physician shall evaluate the principal's capacity and, if the evaluating physician concludes that the principal lacks capacity, enter that evaluation in the principal's medical record. If the evaluating physician has a question as to whether the principal lacks capacity, another physician shall also evaluate the principal's capacity, and if the second physician agrees that the principal lacks the capacity to make health care decisions or provide informed consent, the health care facility shall enter both physician's evaluations in the principal's medical record. If the principal has designated a health care surrogate or has delegated authority to make health care decisions to an attorney in fact under a durable power of attorney, the health care facility shall notify such surrogate or attorney in fact in writing that her or his authority under the instrument has commenced, as provided in chapter 709 or s. 765.203. If an attending physician determines that the principal lacks capacity, the hospital in which the attending physician made such a determination shall notify the principal's primary physician of the determination.

(3) The surrogate's authority commences either upon a determination under subsection (2) that the principal lacks capacity or upon a stipulation of such authority pursuant to s. 765.101(21). Such authority remains in effect until a determination that the principal has regained such capacity, if the authority commenced as a result of incapacity, or until the authority is revoked, if the authority commenced immediately pursuant to s. 765.101(21). Upon commencement of the surrogate's authority, a surrogate who is not the principal's spouse shall notify the principal's spouse or adult children of the principal's designation of the surrogate. Except if the principal provided immediately exercisable authority to the surrogate pursuant to s. 765.101(21), in the event that the primary or attending physician determines that the principal has regained capacity, the authority of the surrogate shall cease, but recommences if the principal subsequently loses capacity as determined pursuant to this section. A health care provider is not liable for relying upon health care decisions made by a surrogate while the principal lacks capacity. At any time when a principal lacks capacity, a health care decision made on the principal's behalf by a surrogate is effective to the same extent as a decision made by the principal. If a principal possesses capacity, health care decisions of the principal take precedence over decisions made by the surrogate that present a material conflict.

(4) Notwithstanding subsections (2) and (3), if the principal has designated a health care surrogate and has stipulated that the authority of the surrogate is to take effect immediately, or has appointed an agent under a durable power of attorney as provided in chapter 709 to make health care decisions for the principal, the health care facility shall notify such surrogate or agent in writing when a determination of incapacity has been entered into the principal's medical record.

(5) A determination made pursuant to this section that a principal lacks capacity to make health care decisions shall not be construed as a finding that a principal lacks capacity for any other purpose.

(6) If the surrogate is required to consent to withholding or withdrawing life-prolonging procedures, part III applies.

History.—s. 3, ch. 92-199; s. 1146, ch. 97-102; s. 22, ch. 99-331; s. 10, ch. 2000-295; s. 23, ch. 2013-162; s. 12, ch. 2015-153.

765.205 Responsibility of the surrogate.—

(1) The surrogate, in accordance with the principal’s instructions, unless such authority has been expressly limited by the principal, shall:

(a) Have authority to act for the principal and to make all health care decisions for the principal during the principal’s incapacity.

(b) Consult expeditiously with appropriate health care providers to provide informed consent, and make only health care decisions for the principal which he or she believes the principal would have made under the circumstances if the principal were capable of making such decisions. If there is no indication of what the principal would have chosen, the surrogate may consider the patient’s best interest in deciding that proposed treatments are to be withheld or that treatments currently in effect are to be withdrawn.

(c) Provide written consent using an appropriate form whenever consent is required, including a physician’s order not to resuscitate.

(d) Be provided access to the appropriate health information of the principal.

(e) Apply for public benefits, such as Medicare and Medicaid, for the principal and have access to information regarding the principal’s income and assets and banking and financial records to the extent required to make application. A health care provider or facility may not, however, make such application a condition of continued care if the principal, if capable, would have refused to apply.

(2) The surrogate may authorize the release of health information to appropriate persons to ensure the continuity of the principal’s health care and may authorize the admission, discharge, or transfer of the principal to or from a health care facility or other facility or program licensed under chapter 400 or chapter 429.

(3) If, after the appointment of a surrogate, a court appoints a guardian, the surrogate shall continue to make health care decisions for the principal, unless the court has modified or revoked the authority of the surrogate pursuant to s. 744.3115. The surrogate may be directed by the court to report the principal’s health care status to the guardian.

History.—s. 3, ch. 92-199; s. 9, ch. 94-183; s. 50, ch. 96-169; s. 23, ch. 99-331; s. 11, ch. 2000-295; s. 6, ch. 2001-250; s. 135, ch. 2001-277; s. 106, ch. 2006-197; s. 13, ch. 2015-153.

PART III LIFE-PROLONGING PROCEDURES

765.301 Short title.

765.302 Procedure for making a living will; notice to physician.

765.303 Suggested form of a living will.

765.304 Procedure for living will.

765.305 Procedure in absence of a living will.

765.306 Determination of patient condition.

765.309 Mercy killing or euthanasia not authorized; suicide distinguished.

765.301 Short title.—Sections 765.302-765.309 may be cited as the “Life-Prolonging Procedure Act of Florida.”

History.—s. 4, ch. 92-199; s. 24, ch. 99-331.

765.302 Procedure for making a living will; notice to physician.—

(1) Any competent adult may, at any time, make a living will or written declaration and direct the providing, withholding, or withdrawal of life-prolonging procedures in the event that such person has a terminal condition, has an end-stage condition, or is in a persistent vegetative state. A living will must be signed by the principal in the presence of two subscribing witnesses, one of whom is neither a spouse nor a blood relative of the principal. If the principal is physically unable to sign the living will, one of the witnesses must subscribe the principal's signature in the principal's presence and at the principal's direction.

(2) It is the responsibility of the principal to provide for notification to her or his primary physician that the living will has been made. In the event the principal is physically or mentally incapacitated at the time the principal is admitted to a health care facility, any other person may notify the physician or health care facility of the existence of the living will. A primary physician or health care facility which is so notified shall promptly make the living will or a copy thereof a part of the principal's medical records.

(3) A living will, executed pursuant to this section, establishes a rebuttable presumption of clear and convincing evidence of the principal's wishes.

History.—s. 4, ch. 92-199; s. 1147, ch. 97-102; s. 25, ch. 99-331; s. 14, ch. 2015-153.

765.303 Suggested form of a living will.—

(1) A living will may, BUT NEED NOT, be in the following form:

Living Will

Declaration made this day of , (year) , I, , willfully and voluntarily make known my desire that my dying not be artificially prolonged under the circumstances set forth below, and I do hereby declare that, if at any time I am incapacitated and

 (initial) I have a terminal condition

or (initial) I have an end-stage condition

or (initial) I am in a persistent vegetative state

and if my primary physician and another consulting physician have determined that there is no reasonable medical probability of my recovery from such condition, I direct that life-prolonging procedures be withheld or withdrawn when the application of such procedures would serve only to prolong artificially the process of dying, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain.

It is my intention that this declaration be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and to accept the consequences for such refusal.

In the event that I have been determined to be unable to provide express and informed consent regarding the withholding, withdrawal, or continuation of life-prolonging procedures, I wish to designate, as my surrogate to carry out the provisions of this declaration:

Name:

Address:

Zip Code:

Phone:

I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.

Additional Instructions (optional):

(Signed)

Witness

Address
Phone
Witness
Address
Phone

(2) The principal's failure to designate a surrogate shall not invalidate the living will.

History.—s. 4, ch. 92-199; s. 35, ch. 99-6; s. 26, ch. 99-331; s. 12, ch. 2000-295; s. 15, ch. 2015-153.

765.304 Procedure for living will.—

(1) If a person has made a living will expressing his or her desires concerning life-prolonging procedures, but has not designated a surrogate to execute his or her wishes concerning life-prolonging procedures or designated a surrogate under part II, the person's primary physician may proceed as directed by the principal in the living will. In the event of a dispute or disagreement concerning the primary physician's decision to withhold or withdraw life-prolonging procedures, the primary physician shall not withhold or withdraw life-prolonging procedures pending review under s. 765.105. If a review of a disputed decision is not sought within 7 days following the primary physician's decision to withhold or withdraw life-prolonging procedures, the primary physician may proceed in accordance with the principal's instructions.

(2) Before proceeding in accordance with the principal's living will, it must be determined that:

(a) The principal does not have a reasonable medical probability of recovering capacity so that the right could be exercised directly by the principal.

(b) The principal has a terminal condition, has an end-stage condition, or is in a persistent vegetative state.

(c) Any limitations or conditions expressed orally or in a written declaration have been carefully considered and satisfied.

History.—s. 4, ch. 92-199; s. 10, ch. 94-183; s. 27, ch. 99-331; s. 16, ch. 2015-153.

765.305 Procedure in absence of a living will.—

(1) In the absence of a living will, the decision to withhold or withdraw life-prolonging procedures from a patient may be made by a health care surrogate designated by the patient pursuant to part II unless the designation limits the surrogate's authority to consent to the withholding or withdrawal of life-prolonging procedures.

(2) Before exercising the incompetent patient's right to forego treatment, the surrogate must be satisfied that:

(a) The patient does not have a reasonable medical probability of recovering capacity so that the right could be exercised by the patient.

(b) The patient has an end-stage condition, the patient is in a persistent vegetative state, or the patient's physical condition is terminal.

History.—s. 4, ch. 92-199; s. 28, ch. 99-331; s. 13, ch. 2000-295.

765.306 Determination of patient condition.—In determining whether the patient has a terminal condition, has an end-stage condition, or is in a persistent vegetative state or may recover capacity, or whether a medical condition or limitation referred to in an advance directive exists, the patient's primary physician and at least one other consulting physician must separately examine the patient. The findings of each such examination must be documented in the patient's medical record and signed by each examining physician before life-prolonging procedures may be withheld or withdrawn.

History.—s. 4, ch. 92-199; s. 13, ch. 94-183; s. 29, ch. 99-331; s. 14, ch. 2000-295; s. 17, ch. 2015-153.

765.309 Mercy killing or euthanasia not authorized; suicide distinguished.—

(1) Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

(2) The withholding or withdrawal of life-prolonging procedures from a patient in accordance with any provision of this chapter does not, for any purpose, constitute a suicide.

History.—s. 4, ch. 92-199.

PART IV
ABSENCE OF ADVANCE DIRECTIVE

765.401 The proxy.

765.404 Persistent vegetative state.

765.401 The proxy.—

(1) If an incapacitated or developmentally disabled patient has not executed an advance directive, or designated a surrogate to execute an advance directive, or the designated or alternate surrogate is no longer available to make health care decisions, health care decisions may be made for the patient by any of the following individuals, in the following order of priority, if no individual in a prior class is reasonably available, willing, or competent to act:

(a) The judicially appointed guardian of the patient or the guardian advocate of the person having a developmental disability as defined in s. 393.063, who has been authorized to consent to medical treatment, if such guardian has previously been appointed; however, this paragraph shall not be construed to require such appointment before a treatment decision can be made under this subsection;

(b) The patient's spouse;

(c) An adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;

(d) A parent of the patient;

(e) The adult sibling of the patient or, if the patient has more than one sibling, a majority of the adult siblings who are reasonably available for consultation;

(f) An adult relative of the patient who has exhibited special care and concern for the patient and who has maintained regular contact with the patient and who is familiar with the patient's activities, health, and religious or moral beliefs; or

(g) A close friend of the patient.

(h) A clinical social worker licensed pursuant to chapter 491, or who is a graduate of a court-approved guardianship program. Such a proxy must be selected by the provider's bioethics committee and must not be employed by the provider. If the provider does not have a bioethics committee, then such a proxy may be chosen through an arrangement with the bioethics committee of another provider. The proxy will be notified that, upon request, the provider shall make available a second physician, not involved in the patient's care to assist the proxy in evaluating treatment. Decisions to withhold or withdraw life-prolonging procedures will be reviewed by the facility's bioethics committee. Documentation of efforts to locate proxies from prior classes must be recorded in the patient record.

(2) Any health care decision made under this part must be based on the proxy's informed consent and on the decision the proxy reasonably believes the patient would have made under the circumstances. If there is no indication of what the patient would have chosen, the proxy may consider the patient's best interest in deciding that proposed treatments are to be withheld or that treatments currently in effect are to be withdrawn.

(3) Before exercising the incapacitated patient's rights to select or decline health care, the proxy must comply with the provisions of ss. 765.205 and 765.305, except that a proxy's decision to withhold or withdraw life-prolonging procedures must be supported by clear and convincing evidence that the decision would have been the one the patient would have chosen had the patient been competent or, if there is no indication of what the patient would have chosen, that the decision is in the patient's best interest.

(4) Nothing in this section shall be construed to preempt the designation of persons who may consent to the medical care or treatment of minors established pursuant to s. 743.0645.

History.—s. 5, ch. 92-199; s. 12, ch. 94-183; s. 32, ch. 99-331; s. 15, ch. 2000-295; s. 7, ch. 2001-250; s. 136, ch. 2001-277; s. 13, ch. 2002-195; s. 5, ch. 2003-57.

765.404 Persistent vegetative state.—For persons in a persistent vegetative state, as determined by the person's primary physician in accordance with currently accepted medical standards, who have no advance directive

and for whom there is no evidence indicating what the person would have wanted under such conditions, and for whom, after a reasonably diligent inquiry, no family or friends are available or willing to serve as a proxy to make health care decisions for them, life-prolonging procedures may be withheld or withdrawn under the following conditions:

(1) The person has a judicially appointed guardian representing his or her best interest with authority to consent to medical treatment; and

(2) The guardian and the person's primary physician, in consultation with the medical ethics committee of the facility where the patient is located, conclude that the condition is permanent and that there is no reasonable medical probability for recovery and that withholding or withdrawing life-prolonging procedures is in the best interest of the patient. If there is no medical ethics committee at the facility, the facility must have an arrangement with the medical ethics committee of another facility or with a community-based ethics committee approved by the Florida Bio-ethics Network. The ethics committee shall review the case with the guardian, in consultation with the person's primary physician, to determine whether the condition is permanent and there is no reasonable medical probability for recovery. The individual committee members and the facility associated with an ethics committee shall not be held liable in any civil action related to the performance of any duties required in this subsection.

History.—s. 33, ch. 99-331; s. 18, ch. 2015-153.

PART V ANATOMICAL GIFTS

765.510 Legislative declaration.

765.511 Definitions.

765.512 Persons who may make an anatomical gift.

765.513 Donees; purposes for which anatomical gifts may be made.

765.514 Manner of making anatomical gifts.

765.515 Delivery of donor document.

765.5155 Donor registry; education program.

765.51551 Donor registry; public records exemption.

765.516 Donor amendment or revocation of anatomical gift.

765.517 Rights and duties at death.

765.518 Eye banks.

765.5185 Corneal removal by medical examiners.

765.519 Enucleation of eyes by licensed funeral directors.

765.521 Donations as part of driver license or identification card process.

765.522 Duty of hospital administrators; liability of hospital administrators and procurement organizations.

765.523 Discrimination in access to anatomical gifts and organ transplants prohibited.

765.541 Certification of procurement organizations; agency responsibilities.

765.542 Requirements to engage in organ, tissue, or eye procurement.

765.543 Organ and Tissue Procurement and Transplantation Advisory Board; creation; duties.

765.544 Fees; organ and tissue donor education and procurement.

765.545 Physician supervision of cadaveric organ and tissue procurement coordinators.

765.546 Procurement of cadaveric organs for transplant by out-of-state physicians.

765.547 Cooperation between medical examiner and procurement organization.

765.510 Legislative declaration.—Because of the rapid medical progress in the fields of tissue and organ preservation, transplantation of tissue, and tissue culture, and because it is in the public interest to aid the medical developments in these fields, the Legislature in enacting this part intends to encourage and aid the development of reconstructive medicine and surgery and the development of medical research by facilitating premortem and